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April 25, 2005

ORIGINAL

Our File No. 21290-104-63

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

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APR 25 2005

Federal Communications Commission
Office of Secretary

Re: Opelika Broadcasting Company
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations (Opelika, Alabama)
MM Docket No. 05-79
RM-10983
Comments and Counterproposal of Waverly Radio Broadcasters

Dear Ms. Dortch:

Transmitted herewith on behalf of Waverly Radio Broadcasters are an original and four copies of its Comments and Counterproposal in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,

John M. Pelkey

Enclosures
JMP:yg

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Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 05-79
Table of Allotments)	RM-10983
FM Broadcast Stations)	
(Opelika, Alabama))	

To: **Office of the Secretary**

Attention: Assistant Chief, Audio Division
Media Bureau

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APR 25 2005

Federal Communications Commission
Office of Secretary

**Comments and Counterproposal
of Waverly Radio Broadcasters**

By Petition for Rulemaking filed March 8, 2004, Opelika Broadcasting Company ("OBC") requested that the Commission institute a rule making proceeding to amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, by allotting Channel 232A to Opelika, Alabama, as that community's second local FM service, fourth local aural service and fifth local broadcast service (the "OBC Proposal").¹ In response, the Commission released a *Notice of Proposed Rulemaking* proposing the requested change to the Table of Allotments and soliciting the submission of comments by April 25, 2005. See *Notice of Proposed Rulemaking*, MM Docket No. 05-79 (adopted March 2, 2005; released March 4, 2005) (the "NPRM").

Waverly Radio Broadcasters (“Waverly Radio”), through counsel, hereby submits its Comments and Counterproposal in response to the *NPRM*. As will be shown below, allocation of Channel 232A to Waverly, Alabama, rather than Opelika, Alabama, results in an arrangement of allotments that better serves the public interest than the proposal put forth in the *NPRM*. As a result, the counterproposal being put forth herein by Waverly Radio (the “Waverly Radio Counterproposal”) should be adopted in lieu of the OBC Proposal.

I. Opelika is Already Home to Numerous Broadcast Stations.

Although Opelika is home to slightly more than 23,000 residents, it is also already home to four full time broadcast stations. It is the community of license of two AM stations, WANI(AM) and WTLM(AM). WANI(AM) is a fulltime station operating nondirectionally on 1400 kHz with 1 kW both day and night. WTLM(AM) operates nondirectionally on 1520 kHz with 1 kW during the day and 650 watts during critical hours. Opelika is also home to WMXA(FM), which is a Class A station operating on 96.7 MHz at an Effective Radiated Power (“ERP”) of 3.5 kW at a Height Above Average Terrain (“HAAT”) of 131 meters. Finally, in addition to being served by UHF TV translator station W18CD, Opelika is the community of license of WSWs-TV, a UPN affiliate that operates in analog mode on Channel 66 with an ERP of 794 kW at a HAAT of 207 meters. WSWs-TV also holds special temporary authority allowing it to operate digitally on Channel 31.

¹ Opelika is already the community of license of WANI(AM), WTLM(AM), WMXA(FM), WSWs-TV and

II. The Commission has Yet to Allocate any Broadcast Facilities to Waverly, Alabama.

By contrast, the allocation of Channel 232A to Waverly, Alabama, would provide first local service to Waverly. In addition, as is demonstrated in the attached Technical Statement of Graham Brock, Inc., allocation of Channel 232A to Waverly would permit 103,356 persons to receive additional service.

Waverly is a community in need of first local service. It is a community with a 2000 U.S. Census population of 184 persons, while 1,247 people reside within the Waverly county division. It is a growing community, having experienced a 21 percent increase in population between the 1990 Census and the 2000 Census and stands as the gateway to Chambers and Tallapoosa Counties. Waverly has its own post office, with its own zip code (36879). It has a mayor and city council form of government. The mayor of Waverly is Ellen L. Hillyer. A number of businesses are located in Waverly, including Waverly Trading Company (antiques), Waverly Feed, Down to Earth Landscaping, Tri-County Termite Co., Tiger Corner Boxcar, the Katich Lodge, Country Kitchen, and Peyton Place restaurant. Waverly is also home to several churches, including Waverly Baptist Church, Mount Traveler Missionary Baptist Church and Peace and Goodwill Baptist Church. Missing from Waverly, however, is its own broadcast facility. Adoption of the WRB Counterproposal would remedy this deficiency.

UHF TV translator station W18CD.

III. Allotment of Channel 232A to Waverly would Better Serve the Commission's Allotment Priorities than would Allotment of that Channel to Opelika.

As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC2d 88, 91 (1982). More recently, the Commission has acknowledged that, because "there are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained[,] . . . as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied." *See Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990). Applying these principles to the present case, it is apparent that the allocation of Channel 232A to Waverly is to be preferred over the allocation of that channel to Opelika inasmuch as Waverly enjoys no local service whereas Opelika is the community of license of four other full service broadcast facilities.

IV. Waverly Radio's Counterproposal is Consistent with the Commission's Rules.

As is demonstrated in the attached Technical Statement prepared by Graham Brock, Inc., the allocation of Channel 232A to Waverly, Alabama, can be accomplished in full compliance with the spacing and coverage requirements established in the Commission's rules. Specifically, Exhibit 1 to that Technical Statement demonstrates

that, from the proposed reference coordinates,² the proposed allocation of Channel 232A meets all of the Commission's minimum distance separation requirements while Exhibit 2 demonstrates that Waverly would be totally encompassed within the station's 70 dBu contour from those reference coordinates.

V. Waverly Radio's Commitments

Waverly Radio hereby commits to file an application requesting authority to construct a new FM station on Channel 232A at Waverly if that channel is allotted and, if authorized, to build that station promptly.

VI. Conclusion

In summary, the Waverly Radio Counterproposal would better serve the public interest than the OBC Proposal. The Waverly Radio Counterproposal would provide first local service, the de facto highest of the Commission's allotment priorities, to Waverly whereas the OBC Proposal would result in a new allocation to a community that is already home to three other radio stations and one full service television station.

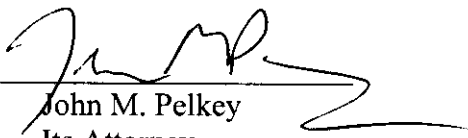
² Allocation of Channel 232A to Waverly can be accomplished with a site restriction of 8.7 kilometers east-southeast of the community at 32° 42' 28" NL; 85° 29' 27" WL.

Accordingly, Waverly Radio respectfully requests that the FM Table of Allotments be amended as follows:

City	Present Allotment	Proposed Allotment
Waverly, AL	None	232A

Respectfully submitted,

Waverly Radio Broadcasters

By: 
John M. Pelkey
Its Attorney

Garvey Schubert Barer
5th Floor, 1000 Potomac Street, N.W.
Washington, DC 20007
202/965-7880

Date: April 25, 2005

COMMENTS AND COUNTERPROPOSAL
WAVERLY RADIO BROADCASTERS
MB DOCKET #05-79
ALLOT CHANNEL 232A
WAVERLY, ALABAMA
April 2005

TECHNICAL STATEMENT

1. This technical statement and attachments were prepared on behalf of Waverly Radio Broadcasters ("WRB"). WRB herein submits its comments and counterproposal in MB Docket #05-79. In MB Docket #05-79, Opelika Broadcasting Company ("OBC") requested the allotment of Channel 232A to Opelika, Alabama, as that community's second local FM service. In order to accommodate the allotment of Channel 232A at Opelika, OBC also requested the reclassification of Station WYSF, Birmingham, Alabama, from Channel 229C to Channel 229C0 and StationWSTR, Smyrna, Georgia, from Channel 231C to Channel 231C0. WRB herein proposes that, in lieu of the allotment of Channel 232A to Opelika, Alabama, Channel 232A be allotted to Waverly, Alabama, as that community's first local FM service.¹ The proposed allotment of Channel 232A at Waverly is mutually exclusive with OBC's requested allotment at Opelika.

PROPOSAL

2. Channel 232A can be allotted to Waverly, Alabama, with a site restriction of 8.7 kilometers east-southeast of the community at geographic coordinates North Latitude 32° 42' 28" and West Longitude 85° 29' 27".² Exhibit #1 is a §73.207 spacing study from the proposed site, demonstrating that Channel 232A meets the Commission's minimum distance separation

-
- 1) The allotment of Channel 232A at Waverly also requires the downgrade of WYSF andWSTR.
 - 2) To avoid shortspacing WYSF, Channel 233C0, Birmingham, Alabama.

requirements to all licensed, applied for or proposed facilities.³ Exhibit #2 demonstrates that from the proposed reference site, a 3.16 mV/m contour will be placed over all of Waverly, Alabama.

3. Therefore, WRB requests the following changes in the Table of Allotments, §73.202(b) of the Commission's rules:

Waverly, Alabama

Present
None

Proposed
232A

PUBLIC INTEREST

4. The allotment of Channel 232A at Waverly, Alabama, will provide that community with its first local FM service. A maximum Class A facility allotted to Waverly will provide 60 dBu service to 103,356 persons in 2516.1 square kilometers.⁴ Once Channel 232A is allotted to Waverly, Alabama, WRB will participate in the process to enable it to submit an FCC Form 301 application to construct a new FM facility at Waverly, Alabama.

5. The foregoing technical statement was prepared on behalf of Waverly Radio Broadcasters by Graham Brock, Inc., its Technical Consultants. All data related to FM facilities was extracted from the CDBS database and all population data was extracted from the 2000 Census database. We assume no liability for errors or omissions in those databases that may be adverse to the requests contained herein.

3) Assuming WYSF and WSTR as Class C0 facilities.

4) Based on uniform terrain.

COMMENTS AND COUNTERPROPOSAL
WAVERLY RADIO BROADCASTERS
MB DOCKET #05-79
ALLOT CHANNEL 232A
WAVERLY, ALABAMA
April 2005

EXHIBIT #1

Allocation Study for Waverly, Alabama
Using Proposed Site as Reference

REFERENCE	CLASS = A						DISPLAY DATES
32 42 28 N							DATA 04-13-05
85 29 27 W	Current Spacings						SEARCH 04-13-05
----- Channel 232 - 94.3 MHz -----							
Call	Channel	Location	Dist	Azi	FCC	Margin	
	N. Lat.	W. Lng. Ant	Power	HAAT			
RADD	ADD 232A	Waverly	AL 0.00	0.0	115.0	-115.00	
	32 42 28	85 29 27	6.000 kW	100 M			
	Counterproposal in MB Docket #05-79						
WYSF	LIC-N 233C	Birmingham	AL 151.99	303.9	165.0	-13.01	
	33 27 45	86 50 59 NC	100.000 kW	309 M			
	Citadel Broadcasting Co.		BLH-20000929AEE				
	> Downgraded to Channel 233C0						
WSTR	LIC 231C	Smyrna	GA 158.78	42.3	165.0	-6.22	
	33 45 35	84 20 07 CN	100.000 kW	311 M			
	Jefferson-pilot Comm.		BLH-19890929KD				
	> Downgraded to Channel 231C0						
RADD	ADD 233C0	Birmingham	AL 151.99	303.9	152.0	-0.01	
	33 27 45	86 50 59	100.000 kW	450 M			
	Ssr Communications Inc.						
WIZB	LIC-2 232C3	Abbeville	AL 142.00	172.3	142.0	0.00	
	31 26 19	85 17 22 ZCN	19.500 kW	113 M			
	Celebrations Communications BLH-19961001KB						
WQSI	LIC 231A	Union Springs	AL 73.96	203.5	72.0	1.96	
	32 05 46	85 48 16 CN	3.000 kW	81 M			
	H&H Communications, L.L.C.		BMLH-19880906KF				
ALLO	RSV 230C3	Union Springs	AL 46.44	201.3	42.0	4.44	
	32 19 04	85 40 16	25.000 kW	100 M			
	> Reserved for WQSI						
WQSI.C	CP 230C3	Union Springs	AL 46.44	201.3	42.0	4.44	
	32 19 04	85 40 16 CX	12.500 kW	143 M			
	H&H Communications, L.L.C. BPH-20031008ABH						
RADD	ADD 231C0	Smyrna	GA 158.78	42.3	152.0	6.78	
	33 45 35	84 20 07	100.000 kW	450 M			
	Opelika Broadcasting Co.						
RADD	ADD 232A	Ellaville	GA 134.32	110.8	115.0	19.32	
	32 16 20	84 09 26	6.000 kW	100 M			
	Linda A. Davidson						
WQZX	LIC 232A	Greenville	AL 137.18	230.1	115.0	22.18	
	31 54 40	86 36 19 CN	3.900 kW	125 M			
	Haynes Broadcasting, Inc. BMLH-19950817KA						

Graham Brock, Inc. - Broadcast Technical Consultants

Ch 232A Reference Site
Latitude: 32-42-28 N
Longitude: 085-29-27 W
ERP: 6.00 kW
Channel: 232A
Frequency: 94.3 MHz
Prop Model: None

Ch 232A - Waverly, AL 70 dBu (3.16 mV/m)

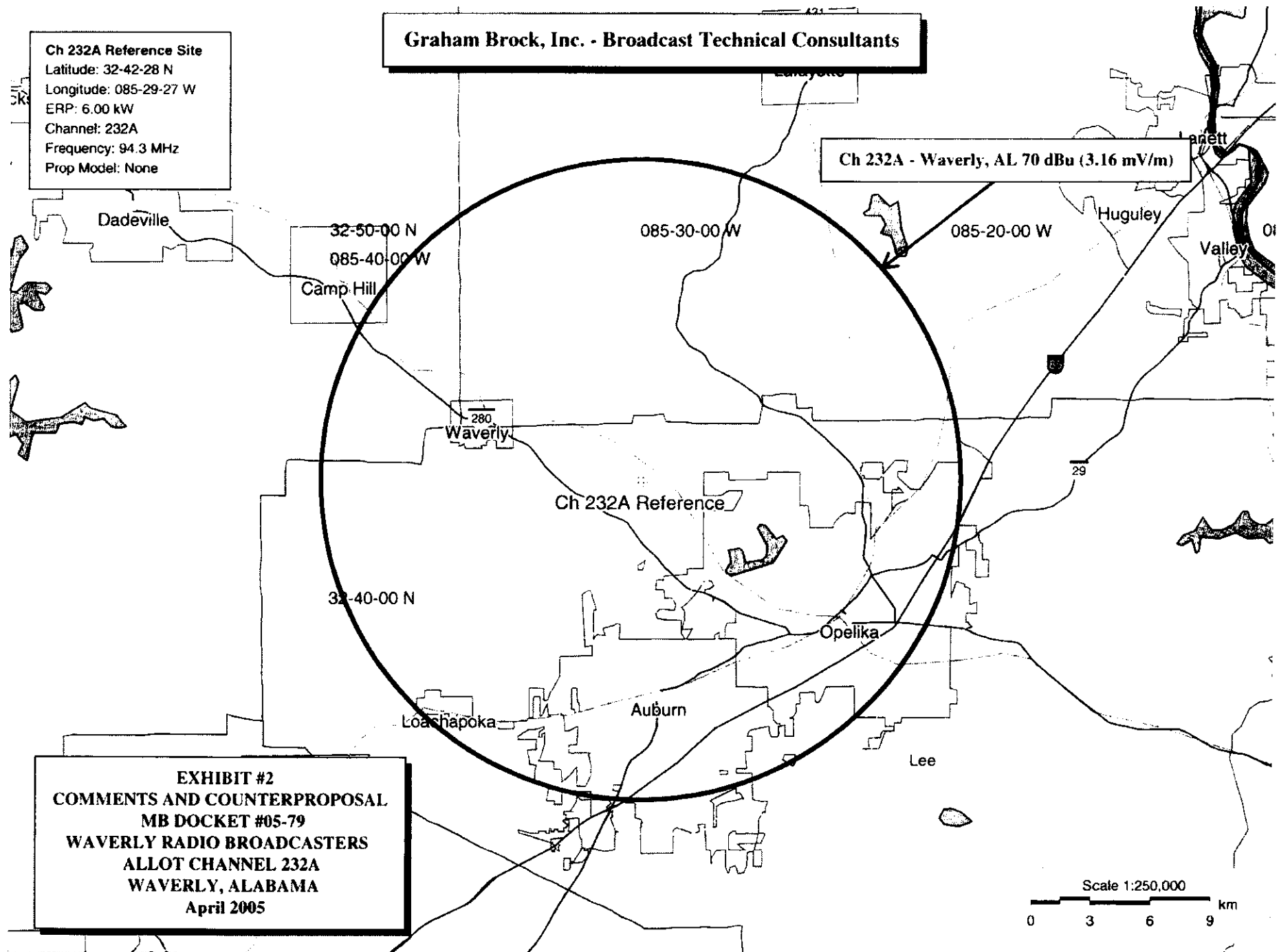


EXHIBIT #2
COMMENTS AND COUNTERPROPOSAL
MB DOCKET #05-79
WAVERLY RADIO BROADCASTERS
ALLOT CHANNEL 232A
WAVERLY, ALABAMA
April 2005

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

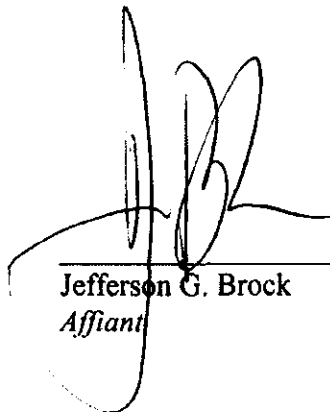
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Waverly Radio Broadcasters to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 13th day of April, 2005.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 13th day of April, 2005*



Notary Public, State of Georgia
My Commission Expires: September 3, 2007

CERTIFICATE OF SERVICE

I, Yvette J. Graves, an employee of Garvey Schubert Barer, hereby certify that I have on this 25th day of April, 2005, sent copies of the above "Comments and Counterproposal of Waverly Radio Broadcasters" by first-class, United States mail, postage prepaid, to the following:

Scott C. Cinnamon, Esq.
1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005

*Sharon P. McDonald
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554


Yvette J. Graves

*Via Hand Delivery